

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CONSOLIDATED UNDER
CASE NO. 05-10155 PBS

YISEL DEAN, Independent Administratrix of the Estate of
STEVEN DEAN, deceased, and on behalf of all statutory
beneficiaries,
Plaintiff,

V.

DOCKET NO: 05cv10155 PBS

RAYTHEON COMPANY, a Delaware corporation,
RAYTHEON AIRCRAFT COMPANY, a Kansas Corporation,
RAYTHEON AIRCRAFT CREDIT CORPORATION, a
Kansas Corporation, COLGAN AIR, INC., a Virginia
Corporation d/b/a US Air
Express,
Defendants.

LISA A. WEILER, Administratrix of the Estate of SCOTT A. KNABE, deceased, and on behalf of all statutory beneficiaries,
Plaintiff,

V.

DOCKET NO: 05cv10364 PBS

RAYTHEON COMPANY, a Delaware corporation,
RAYTHEON AIRCRAFT COMPANY, a Kansas Corporation,
RAYTHEON AIRCRAFT CREDIT CORPORATION, a
Kansas Corporation, COLGAN AIR, INC., a Virginia
Corporation d/b/a US Air Express,
Defendants.

**DEFENDANTS' MOTION *IN LIMINE* TO PRECLUDE EVIDENCE OF CONTENTS OF
RECORDING ON COCKPIT VOICE RECORDER RELATED TO THE DISTRESS OF
THE PILOTS**

The defendants hereby respectfully move for an order *in limine* precluding the plaintiffs from introducing evidence of the contents of the recording on the cockpit voice recorder (CVR) contained in the subject aircraft which depicts distress sounds and screams from the pilots prior to impact. The CVR contains clearly audible screams of the pilots prior to impact. It is obvious that allowing the jury to hear such portions of the CVR, or even allowing the jury to hear reference to such contents of the CVR, would be severely prejudicial to the defendants. The audible distress sounds of the pilots prior to impact offer no probative value to the merits of this case. Those contents of the CVR would undoubtedly trouble the jury, and would most likely evoke sympathy for the plaintiffs, having a devastating effect on the defendants.

Additionally, the content of the CVR related to the distress sounds of the pilots is irrelevant given that claims for pre-impact conscious pain and suffering are not cognizable under controlling Massachusetts law. Gage v. City of Westfield, 26 Mass. App. Ct. 681, *review denied*, 404 Mass. 1103 (1989). Moreover, this Court explicitly denied the plaintiffs' requests to add claims for pre-impact conscious pain and suffering in October 2006 when the plaintiffs sought to amend their complaints. As such, the content of the CVR depicting the distress sounds and screams of the pilots is entirely lacking of probative value and completely irrelevant to the merits of the case.

Importantly, the distress sounds and screams of the pilots are the only portion of the CVR that should be excluded, as the remaining content of the CVR, which includes audible portions of the pre-flight check, are clearly relevant.

WHEREFORE, the defendants respectfully request that this Court enter an order *in limine* precluding the plaintiffs from introducing evidence of the contents of the recording on the

cockpit voice recorder (CVR) contained in the subject aircraft which depicts distress sounds and screams from the pilots prior to impact.

RAYTHEON DEFENDANTS,
By Counsel,

/s/ Tory A. Weigand

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on January 19, 2007.

/s/ Tory A. Weigand

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